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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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26171	7590	07/28/2004	Serving	
FISH & RICHARDSON P.C. 1425 K STREET, N.W. 11TH FLOOR WASHINGTON, DC 20005-3500			EXAMINER PHAN, TAM T	
			ART UNIT	PAPER NUMBER
			2144	

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/690,007	<b>Applicant(s)</b> MORRIS ET AL.	
	<b>Examiner</b> Tam (Jenny) Phan	<b>Art Unit</b> 2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04/30/2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28,55-57 and 64-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28,55-57 and 64-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>05/14/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This application has been examined. Amendment A, received on 04/30/2004 has been entered into record. Claims 29-54 and 58-63 are cancelled due restriction requirements. Claims 1-2, 8-10, 12-13, 15-28, 55-56 are amended. Claims 64-70 are newly added.
2. Claims 1-28, 55-57, and 64-70 remain pending.

#### ***Priority***

3. This application claims benefit of the provisional application 60/195991 (04/07/2000).
4. The effective filing date for the subject matter defined in the pending claims, which has support in parent 60/195991 in this application, is 04/07/2000. Any new subject matter defined in the claims not previously disclosed in parent 60/195991, is entitled to the effective filing date of 10/17/2000.

#### ***Information Disclosure Statement***

5. An initialed and dated copy of Applicant's IDS form 1449, Received 05/14/2004, is attached to the instant Office action.

#### ***Drawings***

6. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

#### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1-28, 55-57, and 64-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumenau (U.S. Patent Number 6,108,637) in view of Guyot et al. (U.S. Patent Number 6,119,098), hereinafter referred to as Guyot.

9. Regarding claim 1, Blumenau disclosed a method of presenting advertising to viewers in a computer network environment, the method comprising: monitoring a viewer's interactions with an associated computer system determining an amount of time to be used in later displaying advertisements on the viewer's associated computer system based on the viewer's monitored interactions (Title, Abstract, column 7 lines 58-65, column 13 lines 51-58, column 14 lines 7-19).

10. Blumenau taught the invention substantially as claimed, however, Blumenau did not expressly teach a method of adjusting a timing of later displayed advertisements on the viewer's associated computer system based on one or more of the viewer's monitored interactions.

11. Blumenau suggested exploration of art and/or provided a reason to modify the method of presenting advertisement to include a step of adjusting timing (column 18 lines 38-56, column 20 lines 23-36).

12. Guyot disclosed a method of adjusting a timing of later displayed advertisements on the viewer's associated computer system based on the determined amount of time (Title, column 2 lines 9-20, column 5 lines 6-18).

13. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the advertisement method of Blumenau with the teachings of Guyot to include a step of adjusting timing in order to effectively present the advertisement to users (column 7 lines 19-47) since when the user is performing other activities on the computer, the probability of viewing an advertisement is relatively low (Guyot, column 1 lines 34-43).

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14. Regarding claim 2, Guyot disclosed a method wherein adjusting the timing comprises adjusting an ad expiration tuning parameter configured to set the quantity of time for which an advertisement is available for display (column 2 lines 9-13, column 4 lines 34-43, column 7 lines 1-6).

15. Regarding claim 3, Guyot disclosed a method wherein adjusting the timing comprises adjusting a maximum display count configured to set a maximum number of times an advertisement may be displayed to a user viewing a batch of ads (column 2 lines 9-13, column 4 lines 34-43, column 7 lines 1-6).

16. Regarding claim 4, Guyot disclosed a method wherein adjusting the timing comprises adjusting a minimum display time configured to set a minimum amount of time that an advertisement may be displayed before another advertisement is displayed (column 2 lines 9-13, column 4 lines 34-67).

17. Regarding claim 5, Guyot disclosed a method wherein adjusting the timing comprises adjusting an idle delay configured to cause a delay from the time a user has gone idle before a first advertisement is replaced with another advertisement (column 5 lines 6- 17, column 7 lines 49-56).

18. Regarding claim 6, Guyot disclosed a method wherein adjusting the timing comprises adjusting an active delay configured to cause a delay from the time a user goes active before displaying another advertisement (column 5 lines 6- 17, column 7 lines 49-56).

19. Regarding claim 7, Guyot disclosed a method wherein adjusting the timing comprises adjusting an idle (no spin) parameter configured to stop the display of a first advertisement from being replaced with the display of another advertisement after a user goes idle (column 5 lines 6- 17, column 7 lines 49-67).

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20. Regarding claim 8, Guyot disclosed a method wherein monitoring a viewer's interactions with an associated computer system comprises monitoring a use of a computer mouse (Abstract, column 2 lines 9-21, column 5 lines 6-18).

21. Regarding claim 9, Guyot disclosed a method wherein monitoring a viewer's interactions with an associated computer system comprises monitoring a use of a computer keyboard (Abstract, column 2 lines 9-21, column 5 lines 6-18).

22. Regarding claim 10, Guyot disclosed a method wherein monitoring a viewer's interactions with an associated computer system comprises monitoring the activity of any input devices connected to the subscriber system [an auditory signal such as the viewer's voice provided through a microphone] (column 7 lines 63-67, column 8 lines 1-1-4).

23. Regarding claim 11, Guyot disclosed a method wherein the auditory signal is the viewer's voice (column 7 lines 63-67, column 8 lines 1-1-4).

24. Regarding claim 12, Guyot disclosed a method wherein monitoring a viewer's interactions with an associated computer system comprises monitoring a maximization and a minimization status of a screen displaying advertising (column 2 lines 19-13, column 5 lines 6-11, lines 45-61).

25. Regarding claim 13, Blumenau disclosed a method wherein monitoring a viewer's interactions with an associated computer system comprises monitoring a viewer's use of a device that sends an input, or causes an input to be sent, to the associated computer system (column 17 lines 24-35).

26. Regarding claim 14, Guyot disclosed a method wherein the timing of displayed advertisements on a screen displaying advertising is configured to not switch between

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advertisements if the screen displaying advertisements is minimized or occluded (column 5 lines 6-11, lines 45-61, column 12 lines 46-56).

27. Regarding claim 64, Blumenau disclosed a method wherein monitoring wherein monitoring the viewer's interactions with the associated computer system includes continually monitoring the viewer's interactions with the associated computer program (column 10 line 65-column 14, column 11 lines 18-29, column 16 lines 13-24).

28. Regarding claim 65, Blumenau disclosed a method wherein monitoring the viewer's interactions with the associated computer system includes monitoring the viewer's interactions with the associated computer system that are unrelated to a manual adjustment of the timing of the displayed advertisements (column 17 lines 24-35, column 18 lines 38-49, column 20 lines 23-36).

29. Regarding claim 66, Guyot disclosed a method wherein adjusting the timing of the later displayed advertisements includes varying lengths of time during which the advertisements are displayed on an advertisements -by- advertisements basis (Title, column 2 lines 9-20, column 5 lines 6-18).

30. Regarding claims 15-28 and 67-69, the computer program stored on a computer-readable medium corresponds directly to the method of claim 1-14 and 64-66, and thus these claims are rejected using the same rationale.

31. Regarding claim 55, Blumenau and Guyot disclosed a method of optimizing a click-through rate of a user viewing content in a computer network environment, the method comprising: downloading advertisements and a set of tuning parameters to a user's computer, wherein the set of tuning parameters are configured to cause a display of a first advertisement on the user's computer to be changed to a display of another advertisement on the user's computer



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by determining an amount of time to be used in the later displayed advertisement based on a user's activity with respect to the user's computer (Guyot, Figure 6B, column 4 lines 34-67, column 7 lines 49-57, column 13 lines 14-35; Blumenau, column 7 lines 58-65, column 13 lines 51-58, column 14 lines 7-19); storing click-through information for the advertisements (Guyot, column 3 lines 55-65, column 4 lines 16-23); and sending the click-through information to a host computer (Guyot, column 4 lines 16-23, column 6 lines 51-63).

32. Regarding claim 56, Blumenau disclosed a method further comprising varying the tuning parameters downloaded to the user's computer; and utilizing a correlation technique to determine a correlation between the tuning parameters downloaded to the user's computer and the click-through rate of the user (column 14 lines 7-19, column 16 lines 13-38, column 17 lines 24-35, column 18 lines 38-56).

33. Regarding claim 57, Blumenau disclosed a method further comprising setting another set of tuning parameters based on the correlation between the tuning parameters and the user's click-through rate (column 16 lines 13-38, column 17 lines 24-35, column 18 lines 38-56).

34. Regarding claim 70, Guyot disclosed a method wherein the tuning parameters are configured to vary lengths of time during which the advertisements are displayed on an advertisement-by-advertisement basis (Title, column 2 lines 9-20, column 5 lines 6-18).

35. Since all the limitations of the claimed invention were disclosed by the combination of Blumenau and Guyot, claims 1-28, 55-57, and 64-70 are rejected.

### ***Response to Arguments***

36. Applicants' arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

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37. Applicants' response to the application of Guyot et al. in Amendment filed 04/30/2004, argued "Middleton and Guyot fail to describe or suggest *determining an amount of time to be used in later displaying advertisements on the viewer's associated computer system based on the viewer's monitored interactions*". It is submitted that these limitations of the claimed invention were disclosed by Blumenau as detailed in the above rejection, and Guyot et al. is relied upon to combine the step of adjusting a timing of later displayed advertisements. Refer to the above rejection for complete details.

38. As the rejection reads, Examiner asserts that the combination of these teachings render the claimed invention obvious.

### ***Conclusion***

39. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

40. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to the enclosed PTO-892 for details.

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41. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam (Jenny) Phan whose telephone number is (703) 305-4665.

The examiner can normally be reached on M-F 9:00-5:00.

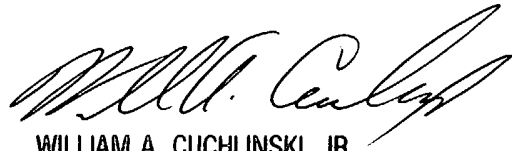
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on 703-308-3873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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July 24, 2004

  
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